



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0197]

RIN 1625-AA08

Special Local Regulations for Marine Events, Swim Event,  
Lake Gaston; Littleton, North Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

---

SUMMARY: The Coast Guard proposes establishment of Special Local Regulations for "The Crossing" swim event, to be held on the waters of Lake Gaston, adjacent to the Eaton Ferry Bridge in Littleton, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Lake Gaston under the Eaton Ferry Bridge and within 100 yards west of the bridge during the swim event.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0197 using any one of the following

methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor,  
Room W12-140, 1200 New Jersey Avenue SE, Washington, DC  
20590-0001.

(4) Hand delivery: Same as mail address above,  
between 9 a.m. and 5 p.m., Monday through Friday, except  
Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four  
methods. See the "Public Participation and Request for  
Comments" portion of the SUPPLEMENTARY INFORMATION section  
below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on  
this proposed rule, call or e-mail BOSN3 Joseph M. Edge,  
Coast Guard Sector North Carolina, Coast Guard; telephone  
252-247-4525, e-mail [Joseph.M.Edge@uscg.mil](mailto:Joseph.M.Edge@uscg.mil). If you have  
questions on viewing or submitting material to the docket,  
call Renee V. Wright, Program Manager, Docket Operations,  
telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

## Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

### Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0197), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to

<http://www.regulations.gov>, type the docket number USCG-2012-0197 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-20120-0197 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### Basis and Purpose

On August 11, 2012 from 7:30 a.m. to 12 p.m., the Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, also known as O'SAIL, will sponsor "The Crossing" on the waters of Lake Gaston, adjacent to Littleton, North Carolina. The swim event will consist of approximately 350 swimmers entering Lake Gaston at the Morning Star Marina on the south bank of Lake Gaston, west of the Eaton Ferry Bridge, and swimming north along the

western side of Eaton Ferry Bridge to the Waterview Restaurant. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

In an effort to enhance safety of event participants the channel in the vicinity of Eaton Ferry Bridge will remain closed during the event on August 11, 2012 from 7:30 a.m. to 12 p.m. The Coast Guard will temporarily restrict access to this section of Lake Gaston during the event.

#### Discussion of Proposed Rule

The Coast Guard proposes to establish Special Local Regulations that will restrict vessel movement on the specified waters of Lake Gaston, Littleton, NC. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel operator receives permission from the Patrol Commander.

Special Local Regulations will encompass the waters of Lake Gaston under the Eaton Ferry Bridge, latitude 36°31'06" North, longitude 077°57'37" West, and within 100 yards of the western side of Eaton Ferry Bridge. All vessels are prohibited from transiting this section of the waterway while the regulation is in effect. Entry into the regulated area will not be permitted except as specifically authorized

by the Captain of the Port or a designated representative. To request permission to transit the area, mariners may contact Coast Guard Sector North Carolina at (910) 343-3882. The regulated area will be enforced from 7:30 a.m. to 12 p.m. on August 11, 2012. This proposed restriction of vessel movement and access to the waterway is for the protection and safety of swimmers participating in the event.

#### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict access to the area, the effect of this rule will not be significant

because the regulated area will be in effect for a limited time, from 7:30 a.m. to 12 p.m., on August 11, 2012. The Coast Guard will provide advance notification via maritime advisories so mariners can adjust their plans accordingly. The regulated area will apply only to the section of Lake Gaston in the immediate vicinity of Eaton Ferry Bridge. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz).

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of recreational vessels intending to transit the specified portion of Lake Gaston from 7:30 a.m. to 12 p.m. on August



11, 2012.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be in effect for 4 and one-half hours from 7:30 a.m. to 12 p.m. The regulated area applies only to the section of Lake Gaston in the vicinity of Eaton Ferry Bridge. Vessel traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CW03 Joseph Edge, Waterways Management Division Chief, Coast Guard Sector North Carolina, at (252) 247-4525. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have

implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an

economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination, under figure 2-1, paragraph 34(h) of the Instruction, that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This proposed rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100— SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U. S. C. 1233

2. Add a temporary § 100.35T05-0197 to read as follows:

§ 100.35T05-0197, Lake Gaston, Enterprise, NC.

(a) Regulated area. The following location is a regulated area: All waters of of Lake Gaston directly under the Eaton Ferry Bridge, latitude 36°31'06" North, longitude 077°57'37" West, and within 100 yards of the western side of the bridge at Littleton, North Carolina. All coordinates reference Datum NAD 1983.

(b) Definitions: (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) Participant means all vessels participating in the "The Crossing" swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(4) Spectator means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) Special local regulations: (1) The Coast Guard Patrol Commander will control the movement of all vessels in the vicinity of the regulated area. When hailed or signaled

by an official patrol vessel, a vessel approaching the regulated area shall immediately comply with the directions given. Failure to do so may result in termination of voyage and citation for failure to comply.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property. The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(3) Vessel traffic, not involved with the event, may be allowed to transit the regulated area with the permission of the Patrol Commander. Vessels that desire passage through the regulated area shall contact the Coast Guard Patrol Commander on VHF-FM marine band radio for direction. Only participants and official patrol vessels are allowed to enter the regulated area.

(4) All Coast Guard vessels enforcing the regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22 (157.1 MHz). The Coast Guard will issue marine information broadcast on VHF-FM marine



band radio announcing specific event date and times.

(d) Enforcement period: This section will be enforced from 7:30 a.m. to 12 p.m. on August 11, 2012.

Dated: March 21, 2012

A. POPIEL  
Captain, U.S. Coast Guard  
Captain of the Port North Carolina

[FR Doc. 2012-7962 Filed 04/02/2012 at 8:45 am; Publication Date: 04/03/2012]